Filed 6/22/16 In re Lamont P. CA1/2

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

In re LAMONT P., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. LAMONT P., Defendant and Appellant.	A146119 (Contra Costa County Super. Ct. No. J1-200947)

On November 26, 2012, having admitted allegations that he threatened a school security officer, committed grand theft and committed second degree robbery while armed with a firearm (Pen. Code, §§ 69, 487, 211, 12022, subd. (a)(1)), Lamont P. was adjudged a ward of the San Francisco Juvenile Court, and admitted to probation upon specified conditions. In accordance with the "DNA and Forensic Identification Data Base and Data Bank Act of 1998" (Pen. Code, § 295 et seq.), as amended by the 2004 adoption of Proposition 69, the "DNA Fingerprint, Unsolved Crime and Innocence Protection Act," Lamont was also ordered to provide a DNA sample.

Jurisdiction was transferred to Contra Costa County in 2013. It was there, following adoption of Proposition 47, the "Safe Neighborhoods and Schools Act" in November 2014, that Lamont filed a petition pursuant to Penal Code section 1170.18, to have the grand theft reclassified as a misdemeanor, and the maximum period of his

confinement reduced from 40 months to 14 months. On June 30, 2015, the trial court granted this relief, with the concurrence of the prosecuting attorney. However, the court denied Lamont's request "that the court vacate its previous order directing petitioner to submit a DNA sample . . . , and that the court order the California Department of Justice CAL-DNA Data Bank to expunge petitioner's state DNA database profile and remove his sample." Based on *Alejandro N. v. Superior Court* (2015) 238 Cal.App.4th 1209, Lamont renewed the DNA issue with a motion for reconsideration, which was denied on August 25, 2015.

Lamont filed a notice of appeal from both orders denying expungement. There seems little doubt that the initial order is appealable as a subsequent order after the final judgment of Lamont being declared a ward. (Welf. & Inst. Code, § 800, subd. (a); *Teal v. Superior Court* (2014) 60 Cal.4th 595, 598 [denial of petition for resentencing under "Three Strikes Reform Act" is appealable].) The appealability of the second order, the one denying Lamont's motion for reconsideration, is not addressed in the parties' briefs. Because the issue is jurisdictional, we are obliged to consider it on its own initiative. (*Jennings v. Marralle* (1994) 8 Cal.4th 121, 126.) And if the order lacks statutory authority as appealable, our only option is dismissal. (*In re Javier G.* (2005) 130 Cal.App.4th 1195, 1201.)

Orders denying motions for reconsideration have long been treated as the functional equivalent of denials of motions to vacate and thus not appealable, particularly when the motion is not based on new or different evidence, and when the initial ruling is itself appealable. (E.g., *Title Ins. & Trust Co. v. Calif. etc. Co.* (1911) 159 Cal. 484, 487-488; *In re Jeffrey P*. (1990) 218 Cal.App.3d 1548, 1550, fn. 2; *People v. Rick* (1952) 112 Cal.App.2d 410, 412.) If the denial of the initial motion is appealable, and an appeal therefrom is sufficient to allow review of the desired issue, "the additional appeal from the order denying reconsideration serves no purpose." (*Madden v. Kaiser Foundation Hospitals* (1976) 17 Cal.3d 699, 705, fn.4.) So it is here, and the purported appeal from the second denial must be dismissed.

With respect to the merits, the parties have favored us with learned briefs (and argument) exploring and explicating the language, purpose, and policies of Propositions 47 and 69, together with the latest statutory development occurring after the denials of Lamont's motions. (See Pen. Code, § 299, subd. (f), added by Stats. 2015, ch. 487, § 4.) All of Lamont's focus is directed to whether the reduction of the former felony theft to a misdemeanor removes the basis for collecting and retaining a DNA sample. But Lamont ignores the elephant in the room—his armed robbery, which is not one of the offenses specified by Proposition 47 for reduction, and which thus is a felony that authorizes collection and retention of DNA. (See Pen. Code, §§ 296, subd. (a), 296.1, subd. (a)(3)(A).) In short, Lamont is simply not statutorily eligible for expungement.

The order of June 30, 2015 is affirmed. The purported appeal from the order denying the motion for reconsideration is dismissed.

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Richman, J.

We concur:

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Kline, P.J.

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Miller, J.

A146119; *P. v. L.P.*